

EXHIBIT P

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SONOMA

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PATRICIA DESANTIS, individually)
and as Success in Interest for)
RICHARD DESANTIS, deceased, and)
as Guardian ad Litem for DANI)
DESANTIS, a minor,)

Plaintiffs,)

vs.)

Case No. C 07-3386

CITY OF SANTA ROSA, JERRY)
SOARES, RICH CELLI, TRAVIS)
MENKE, PATRICIA MANN and DOES 1)
through 25, inclusive,)

Defendants.)

DEPOSITION OF JOSEPH SILNY

REPORTED BY THOMAS DAVID BONFIGLI,

C.S.R. LIC. NO. 5498

FEBRUARY 13, 2008

10:00 A.M.

---oOo---

1 you make any substantial changes, such as changing a yes
2 to a no, that I or any of the other attorneys would have
3 the right to comment on that at the time of trial, and
4 that could undermine your credibility in front of a
5 jury.

6 Do you understand that?

7 A. Yes.

8 Q. Okay. So again, it's important that we have
9 your best and your most accurate testimony today.

10 So is there any reason why we could not go
11 forward with your deposition at this time?

12 A. I don't see why not, no.

13 Q. Okay. What is your current address?

14 A. My current address is 492 Amoros --
15 A-M-O-R-O-S -- Court.

16 Q. And is that in Santa Rosa?

17 A. Yeah.

18 Q. And in April of 2007, were you residing on
19 South Avenue?

20 A. Yes.

21 Q. And what was your address where you resided
22 there?

23 A. 633 South Avenue.

24 Q. And how long had you lived at that address in
25 April of 2007?

1 Q. And there may be times during the deposition
2 that attorneys make objections just to protect the
3 record, but that doesn't mean that you're not required
4 to answer the question.

5 So can you answer it?

6 A. Okay. Can you repeat the question?

7 Q. Okay. Sure.

8 Prior to April 8th of 2007, had you ever had
9 any discussions with Mr. Desantis about his drug use?

10 A. Yes.

11 Q. Okay. And could you tell me what discussions
12 you had with him?

13 A. Like the first week I met him, he -- he -- he
14 offered the information that he had a drug problem.

15 Q. And did he tell you what type of drugs?

16 A. He said, using street terms that I'm -- that I
17 can't really remember, but he said he used meth. And I
18 can't remember what exact word he used, but --

19 Q. But you understood him to be referring --

20 A. Yes.

21 Q. -- to methamphetamines?

22 A. Yes.

23 Q. And did he give you any indication as to how
24 long he had been doing that?

25 A. No.

1 Q. So did he indicate to you that he felt that he
2 had a problem with drug use?

3 A. Yeah.

4 Q. And do you recall what he said in that regard?

5 A. Oh, we were having a conversation, and he,
6 like, cut me off and apologized for being like not being
7 able to pay attention or something like that, scurrying
8 around the room. And he said -- he said that he'd been
9 high for awhile or that he'd been -- he was excusing
10 himself saying he'd been high for a few days or
11 something.

12 Q. And do you recall when that discussion took
13 place?

14 A. That -- that was when I first met him.

15 Q. Did you have any discussions with Mr. Desantis
16 in the week preceding the shooting in which you
17 discussed his drug use at all?

18 A. Can you repeat it, the question?

19 Q. Sure.

20 During the week prior to the time of the
21 shooting, had you had any discussions during that time
22 frame with Mr. Desantis?

23 A. During the week prior?

24 Q. Yes.

25 A. No, no.

1 my distance from him or whatever.

2 And I agreed. I said, "Yeah, that's no
3 problem at all. I wish you luck, you know, and I'm
4 sorry you're having problems."

5 Q. And do you recall when that discussion took
6 place?

7 A. That was a week or so, two weeks, probably,
8 before the shooting.

9 Q. And in the discussions that you had with
10 Patricia Desantis, did she indicate in her conversations
11 with you what types of drugs she was aware that Richard
12 was using?

13 A. Did she tell me what?

14 Q. Right. Did she specifically say he has a
15 problem with any specific type of drug or mention any
16 specific type of drug in these conversations?

17 A. Yes, meth. She said he knew -- she knew that
18 he was using meth, and it was upsetting her.

19 Q. And do you know why it was she was asking you
20 to stay away from Mr. Desantis?

21 A. I think -- I think it was more along the lines
22 that, you know, we hung out together, and she might have
23 been -- I mean, we didn't hang out, we didn't go out of
24 the neighborhood together; we just hung out, you know,
25 in the driveway there talking once in awhile. I had a

1 fire pit we used to, you know, roast marshmallows, you
2 know, things like that. He openly smoked marijuana, so
3 I know she knew about that. Other than that, I don't
4 believe so, other than that.

5 Q. During the week prior to the shooting, did you
6 observe any changes in Mr. Desantis's behavior?

7 A. Prior to the shooting?

8 Q. Yes.

9 A. Yes, drastic changes.

10 Q. Okay. And could you describe them?

11 A. He was a real nice guy, very polite and got
12 along well with him. He was a great neighbor, actually.

13 And prior to the shooting, he just seemed
14 unapproachable, and you could just tell that something
15 was really, really bothering him, and so -- and he was
16 just acting really strange and making comments that made
17 no sense at all, and so --

18 Q. When --

19 A. -- like I said, I was trying to keep my
20 distance, you know, trying not to make eye contact,
21 basically, things like that, just going about my
22 business without acting like, you know, they didn't
23 exist kind of.

24 Q. When you say that he was acting strangely, can
25 you give me some examples of what you observed that you

1 girlfriend didn't like it, but he was, like, upset that
2 he had to get rid of it, and he blamed -- he blamed us
3 for some reason, which makes no sense to me, basically.

4 Q. And what's your girlfriend's name?

5 A. Jamie.

6 Q. And what's her last name?

7 A. Flyn.

8 Q. I'm sorry?

9 A. Flyn, F-L-Y-N.

10 Q. And does she still live with you?

11 A. Yes.

12 Q. During the week prior to the shooting, did you
13 feel any fear of living next door to Mr. Desantis?

14 A. I never did, but during the week prior, yes.
15 I was making plans to move because he was just making
16 strange comments, threatening comments. I can't really,
17 you know, put it into words exactly, but things that
18 make no sense, and he was just upset. I tried to ask
19 him what he was upset about, you know, why he would
20 direct, you know, anger towards me for any reason, but
21 he didn't want to comment on that. He just would make
22 strange comments out of the blue.

23 And so my girlfriend was pregnant and has
24 another child, and I just -- I said, "Well, you know,
25 it's time for us to go." I didn't want any problems,

1 believed that Mr. Desantis was the person who you
2 believe had slashed your tires?

3 A. Why did I believe that?

4 Q. Yeah.

5 A. Just because of the strange way that he was
6 acting, and I'd -- and I'd -- he'd done that so many
7 times; like he'd come home and brag about slashing
8 someone's tire.

9 Q. So he had told you on prior occasions that he
10 had done that to other people?

11 A. Yeah, uh-huh.

12 Q. And did you report that incident to anybody,
13 to the police or --

14 A. No.

15 Q. -- at the time it happened?

16 A. Huh-uh.

17 Q. Okay. Any other behavior that we haven't
18 talked about already that occurred in the week or so
19 before the shooting that you believe was unusual?

20 A. Yeah. He locked Patricia out of the house and
21 threw his wedding ring at her.

22 And I said if she couldn't get back in the
23 house that she could come over if she needed -- if she
24 needed me or if she needed anything, she could knock on
25 my door.

1 Q. And when was the first time you saw them on
2 Easter Sunday?

3 A. Leaving to go to Easter dinner, I believe, or
4 Easter lunch. I said, "Have a nice Easter," and they
5 left.

6 Q. And did you see them return to the house on
7 Easter Sunday?

8 A. I'm not sure. I don't know.

9 Q. But at some point on Easter Sunday, they
10 returned home?

11 A. I believe so, yeah.

12 Q. And did you have any further discussion with
13 them that evening?

14 A. No.

15 Q. After they came home on Easter Sunday, did you
16 observe anything out of the ordinary?

17 A. No.

18 Q. And at some point that evening, did you hear
19 some gunshots?

20 A. Yes.

21 Q. Okay. And when was the first time that you
22 heard any gunshots?

23 A. I think it was 1:00 in the morning.

24 Q. And were you in bed, or were you up at that
25 time?

1 A. I was actually up. I heard a noise. I went
2 outside, and I saw some clothing that I'd given Richard
3 draped around my -- the bed of my truck, and I grabbed
4 the clothing and threw it away in the trash, and that's
5 when I heard the gunshots.

6 Q. So did you come outside before you heard the
7 gunshots, or did you come outside in response to hearing
8 the gunshots?

9 A. No, I didn't come outside in response. I -- I
10 heard a noise outside by my truck. Since my tire'd been
11 slashed, I, you know, was paying attention to anything,
12 any noises outside my residence, so I went out there and
13 saw the clothes draped around the bed, sweaters and
14 pants and stuff that didn't fit me.

15 Q. And you said they were clothing that you had
16 given to Richard at some point?

17 A. Yeah.

18 Q. And do you know why they were there?

19 A. No.

20 Q. And then when you heard the shots, was that
21 while you were still outside or after you had gone back
22 into the house after you'd gone outside to get the
23 clothing?

24 A. No, I was still outside.

25 Q. Okay. And what did you hear?

1 directed them to their residence.

2 Q. When you say "them" --

3 A. They were in my front yard with a dog.

4 Q. How many police officers did you see when you
5 opened up your front door?

6 A. Two, and the dog.

7 Q. And did you talk with the officers?

8 A. They asked me where -- they said, "Where is
9 he?"

10 Q. And what did you tell them?

11 A. I just pointed. (Indicating.)

12 Q. Pointed to the Desantis residence?

13 A. Yeah.

14 Q. And did they tell you to go back into the
15 house?

16 A. Yeah.

17 Q. Did you have any other conversations that
18 evening with any of the police officers that came to the
19 scene?

20 A. Did I have any conversations that evening?

21 Q. Yes, with any of the other police officers
22 other than the conversation you just described.

23 A. After the shooting between -- after the police
24 were shooting, they came into our house and asked if we
25 were okay and stuff, and that was -- that was it.

1 Actually, I'm sorry. Can I -- can I --

2 Q. Sure.

3 A. I went to the edge of my porch and saw Richard
4 standing on his porch, and then they yelled at me a
5 second time to get back inside, and then that's when I
6 went inside.

7 Q. So you were able to see Mr. Desantis on his
8 front porch from the porch on your house?

9 A. Yeah.

10 Q. Okay. And then what did you do after you went
11 back inside?

12 A. I went to the window.

13 Q. And which window?

14 A. My living room window.

15 Q. And where does that look out to?

16 A. The driveway that we share.

17 Q. Okay. And what did you see when you looked
18 out your living-room window?

19 A. Richard on his porch and the police giving him
20 orders to get down and --

21 Q. Did you see Patricia Desantis when you looked
22 out the window?

23 A. Yes.

24 Q. And where was she?

25 A. Behind him. At some point shortly after he

1 was on the porch, he stepped off the porch, and she was
2 on the porch behind him with I think her daughter in her
3 arms.

4 Q. Okay. And you said that you heard the police
5 giving orders for him to get down?

6 A. Yeah.

7 Q. Okay. Can you tell me what you heard them say
8 to Mr. Desantis?

9 A. "Put your hands where I can see 'em, and get
10 down on the ground now."

11 Q. And could you see at that time what
12 Mr. Desantis was wearing?

13 A. No shirt and no shoes; shorts or pants. I
14 can't recall.

15 Q. Did you hear Mrs. Desantis say anything to
16 the police officers?

17 A. No.

18 Q. Did you ever hear at any time prior to the
19 time that the police officers shot Mr. Desantis Patricia
20 say, I have his gun, or something to the effect that, He
21 doesn't have a gun?

22 A. No.

23 Q. And what did Richard do after the police told
24 him to keep his hands where they could see him and get
25 down on the ground?

1 A. I never saw him go down on the ground,
2 actually.

3 Q. Did you see him comply with any of the
4 instructions that the police officers were giving him?

5 MR. SAFIRE: Calls for a conclusion. I would
6 object.

7 MS. FOWLER: Q. Go ahead; you can answer the
8 question.

9 A. Can you repeat the question? I'm sorry.

10 Q. Sure.

11 Did you observe Mr. Desantis complying with
12 any of the instructions that the police officers were
13 giving him?

14 A. Not -- not -- not really, no. He had his
15 hands behind his head, and they were telling him to get
16 his hands up. And it seemed like they might have
17 thought he was confused or whatever 'cause it might
18 have -- it kind of looked like he may have was trying to
19 do the right thing by putting his hands behind his head.
20 He had his hands behind his head most of the time before
21 the shooting, but he never would raise 'em, and they
22 would over and over again say, you know, "Put your hands
23 where we can see them," you know. "Take 'em -- take 'em
24 from behind your head slowly." And he wouldn't do it,
25 that I could see.

1 Q. Did you --

2 A. And they would say, "Get down on the ground,"
3 which I also didn't witness him getting down on the
4 ground. He may -- he may have at some point, but from
5 all the -- from all that I saw, he was always standing.

6 Q. And did you hear the police officers give him
7 these commands more than one time?

8 A. Yes.

9 Q. Can you give me an estimate as to how many
10 times you heard them giving him the commands?

11 A. Three or four.

12 MR. SAFIRE: Well, I'm going -- I'm going to
13 object as being vague. I don't know what commands
14 you're talking about. I think it's vague.

15 MS. FOWLER: Q. Okay. When you say that you
16 heard the officers give him three or four commands, do
17 you mean that the commands that they were giving they
18 would repeat three and four times or that you heard them
19 only give him three or four different commands?

20 A. No, repeat, repeats.

21 Q. So each command that you heard them give, they
22 would repeat it three or four times?

23 A. Yes.

24 Q. And the commands that you heard, did they
25 appear to be coming from one police officer or more than

1 one police officer?

2 A. More than one.

3 Q. Did you ever hear Mr. Desantis say anything in
4 response to any of the commands that the police officers
5 were giving him?

6 A. Can you repeat the question?

7 Q. Sure.

8 Did you ever hear Mr. Desantis say anything in
9 response to the commands which the police officers were
10 giving him?

11 A. No.

12 Q. Did you ever hear him say anything that night
13 between the time that you heard the shots fired in his
14 residence and the time that the police officers fired?

15 A. Sorry. Repeat the question.

16 Q. Sure.

17 Did you ever hear Mr. Desantis say anything
18 that night between the time that you heard the initial
19 gunshots --

20 A. No.

21 Q. -- inside his house and the police shot him?

22 A. No.

23 Q. And then what happened after you heard the
24 police repeating these commands to Mr. Desantis?

25 A. Repeat the question. Sorry.

1 Q. Sure.

2 What happened after you heard the police
3 giving him these repeated commands?

4 A. He -- he wouldn't -- he didn't move much.
5 He just -- he kept his hands behind his head and inched
6 forward a little bit is what I saw, but that's it.

7 Q. And then what happened after that?

8 A. He'd started to go down onto the ground, and
9 then he lifted up really fast and started to run towards
10 the police.

11 Q. Run toward --

12 A. The police.

13 Q. Oh.

14 When you were looking out your window, were
15 you able to see where the police officers had positioned
16 themselves?

17 A. I -- my memory, it includes two that were
18 outside my window, the same two that were in my front
19 yard. I'm sure there was more, but I don't really
20 recall seeing too many of 'em, only the two that were
21 right outside my window.

22 Q. Do you recall seeing if there were any other
23 police officers on the other side of the driveway across
24 from your house?

25 A. Do I recall seeing any?

1 when you observed him running towards the police?

2 A. Repeat the question.

3 Q. Sure.

4 What direction did he run when you said he was
5 running towards the police?

6 A. From his porch directly in line with my porch,
7 actually.

8 Q. So he was running towards the direction of
9 your house?

10 A. Diagonally, diagonally across the driveway.
11 The police were standing a little bit towards my side,
12 and so when he ran, he ended up on my side of the
13 driveway.

14 Q. And when Mr. Desantis lifted up, did you hear
15 the police officers say anything at that point?

16 A. Shouting, yelling. I can't exactly tell you
17 what words those were. Stop, maybe, but I can't -- I
18 can't tell you. I can't remember.

19 Q. And then what did you observe after
20 Mr. Desantis started running towards the police
21 officers?

22 A. After he started running towards the police
23 officers?

24 Q. Yes.

25 A. I saw him get shot.

1 at any point?

2 A. I saw the door open, but I didn't see her
3 exit the house, no.

4 Q. Did you see her looking out the door or
5 standing in the doorway?

6 A. Can't really tell.

7 Q. And from the time that you heard the initial
8 shots fired inside the Desantis residence until the
9 police officers fired shots, did you ever hear
10 Patricia Desantis say anything to the police officers?

11 A. No.

12 Q. When you saw Patricia and Richard on their
13 porch, did you ever observe Patricia doing what appeared
14 to be a search of Mr. Desantis's person?

15 A. No.

16 Q. And then what happened after Mr. Desantis was
17 down on the ground?

18 A. Police came, you know, more -- I noticed more
19 police outside. One of 'em came and knocked on our door
20 and came in and asked if we were okay.

21 Q. And do you know which police officer that was
22 that came and knocked on your door?

23 A. No.

24 Q. Do you know if it was one of the police
25 officers that you initially saw when the police first

1 contest; just get a little focused.

2 (Recess.)

3 MS. FOWLER: Okay. Let's go back on the
4 record.

5 Q. I'm close to being done, and then these two
6 gentlemen have an opportunity to ask you questions.

7 A. Okay. That's fine.

8 Q. You said that at some point that Mr. Desantis
9 lifted up and then ran towards the police officers. How
10 would you describe the pace in which he was going
11 towards the police officers?

12 A. Quickly; as quickly as a person could.

13 Q. So running as opposed to sprinting or walking?

14 A. Running, yeah, bolting, whatever you want to
15 use, whatever, fast, very fast.

16 MS. FOWLER: Okay. I'm going to mark as the
17 next exhibit. And unfortunately, we were trying to do
18 this sequentially, but I don't recall what our last
19 exhibit was, so I'm just going to mark this as A.

20 MR. SAFIRE: Okay. That's okay.

21 What is it?

22 MS. FOWLER: That's the statement from --

23 MR. SAFIRE: Oh, okay.

24 (Whereupon, Defendant's Exhibit A
25 is marked for identification.)

1 the impression that because -- just the look on his
2 face, basically, is why I made those comments.

3 Q. Okay.

4 A. Over the course of getting to know someone,
5 you can, you kind of get a feel for what their facial
6 expressions tell you or their body expressions, I guess.

7 Q. And that's what your observation of his facial
8 expressions and body language told you?

9 A. Yeah.

10 What I meant by that one statement, you know,
11 I would have done the same thing, I mean, what I meant
12 by that was -- I mean, I'm sure that can be hurtful to
13 Patricia and them, but what I really meant was that, you
14 know, the cops, you know, were there, and I could never
15 see myself bolting towards the police like that, so, you
16 know, if I was in his shoes, I would expect to have
17 gotten shot is all I really kind of meant by that.

18 Q. Okay. Is there anything else that you
19 observed that night regarding this shooting that you
20 haven't already described to us?

21 A. Is there anything else I would like to add?

22 Q. Anything else that you observed that you
23 haven't told us about?

24 A. I don't believe so.

25 MS. FOWLER: Okay. Thank you. I don't have

1 of the plants, you know, just the things he would say.

2 Q. And did you get the impression that he was
3 paranoid about whether or not you would disclose his
4 confidences or something, or what was it about those
5 conversations that made you feel it was crazy?

6 A. No, I don't think he felt -- I don't know what
7 he felt. I couldn't put a finger on it. Nothing made
8 sense to me, so -- yeah.

9 Q. Okay.

10 A. If that answers the question.

11 Q. I think I understand.

12 What training have you had, if any, relative
13 to people being under the influence?

14 A. None.

15 Q. What training have you had, if any, about
16 police practices during the course of an arrest?

17 A. Oh, no -- none.

18 Q. So when you said that you would have done the
19 same thing as the police, you're just basing that on
20 what?

21 A. Well, first of all, I didn't know that -- you
22 know, that I was making a statement, you know, that
23 other people, you know, were going to hear, so I spoke
24 freely. I mean, obviously, that doesn't sound very
25 good. I mean, I didn't mean that -- for it to sound

1 like, you know, I'm glad for any reason that he was hurt
2 or killed.

3 What did I mean by that. What I meant by that
4 was if I was in his shoes -- you know, basically, when I
5 watched it, when I watched it all happen, I couldn't
6 believe that he bolted forward, and so I only thought to
7 myself one could only expect to get shot when -- well,
8 I'm no expert. That's just what I thought.

9 Q. Okay.

10 A. I've been in those kind of situations,
11 actually, before, and I just do what the police tell me
12 to do. I certainly have never ran towards the police.
13 I'm not saying that I know that they -- that they didn't
14 make a mistake or anything like that. I don't know, you
15 know.

16 Q. What did you think Richard was gonna do when
17 he ran to the police officer?

18 A. What did I think he was gonna do?

19 MS. FOWLER: Objection to the extent it calls
20 for speculation?

21 THE WITNESS: It seemed to me he was
22 committing suicide almost like is what it seemed like.

23 MR. SAFIRE: Q. I see. So --

24 A. I mean, he --

25 Q. Did you think he was going to injure the

1 A. I don't.

2 Q. Okay. And after the first shot, as I
3 understand your testimony, Richard was pushed back by
4 the shot. Is that what you said?

5 A. He was running at a diagonal, and I noticed
6 something, you know, knock him off of his, you know,
7 straight, you know, to the side a little bit, and he
8 regrouped, still trying to run. Then I heard a couple
9 more shots.

10 Q. It was clear to you that this first shot had
11 an impact on Richard's body, correct?

12 A. Yes.

13 Q. And where were his hands when that first shot
14 was --

15 A. A small impact. You know, it didn't stop him.

16 Q. Okay.

17 A. Why are you laughing?

18 Q. I'm sorry. Please finish.

19 A. No, I'm done.

20 Q. Where were his hands when that impact that you
21 observed occurred?

22 MS. FOWLER: From the first shot?

23 MR. SAFIRE: Right, exactly.

24 A. Can you repeat the question?

25 Q. Right.

1 State of California)

2 County of Sonoma) ss

3 I, THOMAS DAVID BONFIGLI, a Certified Shorthand
4 Reporter for the State of California, hereby certify that
5 the witness in this deposition was by me duly sworn to
6 testify the truth, the whole truth and nothing but the
7 truth; that said deposition was taken at the time and
8 place therein stated; that the testimony of the said
9 witness was reported by me and was thereafter transcribed
10 under my direction into typewriting; that the foregoing
11 is a full, complete and true record of said testimony;
12 and that the witness was given an opportunity to read and
13 correct said deposition and to subscribe the same.
14 Should the signature of the witness not be affixed to the
15 deposition, the witness shall not have availed
16 himself/herself of the opportunity to sign or the
17 signature has been waived. I further certify that I am
18 not of counsel or attorney for either or any of the
19 parties in the foregoing deposition and caption, nor in
20 any way interested in the outcome of this case.

21 IN WITNESS WHEREOF, I have hereunto set my
22 hand this 29th day of February, 2008.

23 _____
24 THOMAS DAVID BONFIGLI,
25 C.S.R. LIC. NO. 5498